

responsible for the necessary coordination between the cognizant agencies in his own country in regard to the formulation or revision of national positions. Subject to the foregoing, the JSC will maintain and update, if necessary, its own Terms of Reference.

5.3. EXECUTIVE MANAGEMENT COMMITTEE (EMC)

5.3.1. Structure and Functions of Committee

The EMC will implement the tasks enumerated in this Supplement. A National Project Manager (NPM) and a representative of the operational user will represent each of the Participants on the EMC. Each of the Participants will have only one vote. The committee will be chaired by the U.S. PM who acts as overall PC. Meetings are normally held using interpreters. The committee will meet at least twice a year.

With respect to the GMLRS Program, the EMC will have, but not be limited to, the following functions:

- 5.3.1.1. Approval of the joint system level performance requirements,
 - 5.3.1.2. Approval of the GMLRS Procurement Plan and GMLRS Support Plan, including the cooperatively funded system engineering tasks, and
 - 5.3.1.3. Establishment of the detailed financial management procedures, for incorporation by the NPMs into the GMLRS Procurement Plan.
- 5.3.2. Decisions: The EMC will make its decisions by unanimous consent. In the event that unanimous consent cannot be reached on a substantive issue, the Chairman will submit the matter immediately to the JSC.
- 5.3.3. Establishing and Dissolving of Working Groups: The EMC will have the authority to establish and dissolve joint working groups, approve their Terms of Reference, and direct their activities within the scope of this Supplement.

5.4. PROGRAM COORDINATOR (PC)

The PC will be responsible for:

- 5.4.1. Recommending to the EMC allocation of resources to ensure that assigned Production and Support Phase tasks remain within schedule and cost and satisfy the objectives for the joint GMLRS Program. In carrying out this responsibility, the PC will use the resources of the PMO in coordination with the NPMs.
- 5.4.2. Chairing the EMC, and ensuring rapid and close coordination with the NPMs in the management of the GMLRS Program.

- 5.4.3. *Receiving the recommendations of Working Groups and acting upon them in the best interest of all Participants in coordination with the EMC.*
- 5.4.4. *Conducting joint Program review and planning meetings to evaluate and guide work in progress and ensure that Program objectives are being met in accordance with the national time frames.*
- 5.4.5. *Submitting progress reports to the JSC at least twice a year.*
- 5.4.6. *Receiving and acting upon the instructions of the JSC.*
- 5.4.7. *Directing the activities of the PMO.*

5.5. NATIONAL PROJECT MANAGERS (NPM)

Each Participant's NPM will be responsible for:

- 5.5.1. *Coordinating the accomplishment of national tasks within the framework of the overall GMLRS Program plan and schedule.*
- 5.5.2. *Monitoring the progress and accomplishments of national Contractors performing GMLRS Production activities on behalf of the Participants.*
- 5.5.3. *Ensuring that funds are committed for the GMLRS Production and Support Phase, in accordance with the GMLRS Procurement Plan and GMLRS Support Plan.*
- 5.5.4. *Controlling approved system interfaces and the identification of all nationally developed modules.*
- 5.5.5. *Implementing the security, data exchange and disclosure and use of Project Information provisions of this Supplement, for tasks, which are their responsibility.*
- 5.5.6. *Exchanging data as required and assistance to the PMO.*
- 5.5.7. *Notifying the PMO promptly of problems that could adversely affect required GMLRS performance, cost, or schedule.*
- 5.5.8. *Providing support/implementing their responsibilities in accordance with the GMLRS Procurement Plan and GMLRS Support Plan.*

5.6. PROGRAM MANAGEMENT OFFICE (PMO)

5.6.1. The MLRS PMO established at Redstone Arsenal, Alabama, will continue to perform those activities necessary to enable the PC to execute the development and procurement for the Production and Support Phase on behalf of the Participants in accordance with this Supplement. These activities will include, but will not be limited to:

5.6.1.1. Ensuring that each Participant's interests are being taken into consideration;

5.6.1.2. Managing the Program on a day-to-day basis;

5.6.1.3. Handling all contractual activities and formal relations with Contractors;

5.6.1.4. Responsibility for funding arrangements/accounting system;

5.6.1.5. Responding to queries from the NPMs;

5.6.1.6. Reporting to the EMC;

5.6.1.7. Monitoring the GMLRS Procurement Plan and Support Plan activities.

5.6.1.8. *Recommending to the Participants the allocation of resources to ensure that the GMLRS Program objectives are met within schedule and cost.*

5.6.2. Within a reasonable period of the effective date of this Supplement, each Parent Participant will provide one CPP, or more as requested by the JSC, for duty within the PMO as specified in Annex B. Job descriptions for these CPP positions will be approved by the EMC. European staff for the PMO will actively participate in the GMLRS Program management organization, which may include attendance at Contractors locations for extended periods of temporary duty.

SECTION VI

FINANCIAL ARRANGEMENTS

6.1. GENERAL

- 6.1.1. In consideration of the collective advantages and benefits to the Participants to be derived from participation in the GMLRS Program, each Participant will bear its share of the Production and Support Phase through contributions to the extent stated in this Supplement, in accordance with an approved GMLRS Procurement Plan and Support Plan. Except for national activities in direct support of the GMLRS Production and Support Phase, European contributions will be in U.S. Dollars. The GMLRS Program's Fiscal Year (FY) will be the U.S. FY.
- 6.1.2. Each Participant will contribute its equitable share of the full Financial Costs and Non-financial Costs of the Production and Support Phase, including overhead costs, administrative costs, and costs of claims, and will receive an equitable share of the results of this Phase in accordance with this Supplement and the approved GMLRS Procurement Plan. Contributions will be made in accordance with the GMLRS Procurement Plan, which will be approved by the EMC at least thirty (30) days prior to the commencement of the FY.
- 6.1.3. The EMC will develop a five-year projection of the Participants' planned cost contributions that will be updated on an annual basis and will be reflected in the approved GMLRS Procurement Plan. The Participants' projected five-year cost contributions in the approved plan will be calculated in both base year dollars (FY 2004) and then year dollars.
- 6.1.4. The Participants recognize that it may become necessary for one Participant with the authority of the other Participant(s), to incur contractual or other responsibilities for the benefit of the other Participant(s) prior to receipt of the other Participants' funds. In the event that one Participant incurs such responsibilities, the other Participant(s) will make such funds available in such amounts and at such times as may be required by the Contract or other responsibility, where such performance or cancellation is done following prior consultation with the other Participant(s), and will pay any damages and costs that may accrue from the performance of or cancellation of the Contract or other responsibility in advance of the time such payments, damages, or costs are due.
- 6.1.5. The EMC will be responsible for establishing the detailed financial management procedures under which the Production and Support Phase

will operate. These procedures, which must be in accord with the national accounting and audit requirements of the Participants, will be detailed in the GMLRS Procurement Plan. Each Participant will fund the Production and Support Phase in accordance with the agreed schedule of financial contributions contained in the GMLRS Procurement Plan, which will be consistent with paragraph 6.2.

- 6.1.6. A Participant will promptly notify the other Participants if available funds are not adequate to fulfill its responsibilities under this Supplement. If a Participant notifies the other Participants that it is terminating or reducing its funding for the GMLRS Production and Support Phase, the Participants will immediately consult with a view toward continuation on a modified basis. In the event that an understanding to continue on a modified basis cannot be reached, the provisions of Section XX (Amendment, Termination, Entry into Effect, and Duration) will apply.

6.2. COOPERATIVE ACTIVITIES

Cooperative activities will be funded as follows:

- 6.2.1. Costs will be shared by the Participants based upon their GMLRS hardware quantities versus the total quantity of actual GMLRS assets procured from the U.S. integration line, on an annual basis. The contributions will be documented in the approved GMLRS Procurement Plan prior to commencement of the FY and adjusted at the end of each FY to ensure that contributions are based on actual procurements rather than projected.
- 6.2.2. Cooperative activities include the continuation of design activities, such as cooperative system engineering and design updates and maintenance of the GMLRS PDDP; cooperative test programs such as qualification of common sources, qualification of common production lots, stockpile reliability and shelf-life testing; and, if jointly determined, the establishment and operation of a cooperative GMLRS maintenance facility.
- 6.2.3. A Participant may elect not to procure any GMLRS hardware quantities in any given year. However, that Participant will be required to contribute a portion of the costs for that year. Such amount, if any, will be determined by the EMC and documented in the approved GMLRS Procurement Plan.
- 6.2.4. Each Third Party customer will be given the opportunity to receive the benefits of specified cooperative activities (Engineering Services). Should a Third Party choose to participate, they will be required to fund a pro-rata share based on their GMLRS hardware quantities versus the total quantity of GMLRS assets procured by all Participants. Should they choose not to participate, but subsequently decide that they needed all or some benefits from these cooperative activities, they will be required to retroactively pay the annual pro-rata share, as determined by the EMC.

6.2.5. The cost of personnel in the PMO will be borne as follows:

6.2.5.1. The Host Participant will bear the costs of all pay and allowances of Host Participant personnel in the PMO.

6.2.5.2. The Parent Participant will bear the following Cooperative Project Personnel (CPP)-related costs:

6.2.5.2.1. All pay and allowances of CPP assigned to the PMO.

6.2.5.2.2. Transportation of CPP, CPP dependents, and their personal property to the PMO location prior to commencement of the CPP assignment in the PMO, and return transportation of the foregoing from the PMO location upon completion or termination of the CPP assignment.

6.2.5.2.3. Compensation for loss of, or damage to, the personal property of CPP or CPP dependents, subject to the laws and regulations of the Parent Party's government.

6.2.5.2.4. Preparation and shipment of remains and funeral expenses in the event of the death of CPP or CPP dependents.

SECTION VII

CONTRACTING PROVISIONS

7.1. The U.S. DoD will be primarily responsible for Contracting for the Production and Support Phase in accordance with U.S. Contracting laws, regulations and procedures, except for the Contracting requirements described in paragraph 7.3 below. In addition, the PMO may request that a Participant other than the U.S. DoD issue Contracts for the Production and Support Phase in accordance with that Participant's national Contracting laws, regulations and procedures. The Contracting Officer for any Contract is the exclusive source for providing contractual direction and instructions to Contractors.

7.2. The U.S. DOD through the PMO has awarded a contract to facilitate a U.S. GMLRS integration line to Lockheed Martin Missiles and Fire Control Systems -- Dallas (LMMFC-D). LMMFC-D was the Contractor for the GMLRS EMD Phase.

7.3. The PMO will be responsible for the coordination of activities relating to the Production and Support Phase, and will cooperate with the Contracting Officers in the areas of Contract procedures, Contract negotiation, evaluation of offers, and Contract award. The PMO will review statements of work prior to the development of solicitations to ensure that they are in accordance with this Supplement. In addition, Contracting Officers will keep the PMO advised of all financial arrangements with the Contractor. Prior to the award of jointly funded Contracts, the Contracting Authority will invite the other NPMs or his/her representative, to review the draft Contract, to ensure that its terms and conditions reflect the requirements of all Participants. The Contracting Authority will not place any such Contract without the written approval of the EMC.

7.4. The Contracting Participant(s) will insert into prospective Contracts (and require its Contractors to insert into subcontracts) suitable terms and conditions to satisfy the provisions of this Supplement, including but not limited to Section X (Disclosure and Use of Project Information), Section XIII (Security) and Section XIV (Third Party Sales and Transfers) and Section XX (Amendment, Termination, Entry into Effect, and Duration) including suitable provisions to ensure compliance with the Participants' respective export control laws and export control implementing regulations. During the Contracting process, the Contracting Participant(s) will advise prospective Contractors of their obligation immediately to notify the contracting Participant(s), before Contract award, if they are subject to any license or agreement that will restrict their freedom to disclose Information or permit its use. The contracting Participant(s) will also advise prospective Contractors not to enter into any new agreement or arrangement that will result in such restrictions. In the event that the contracting Participant is unable to secure adequate rights to use and disclose Information as required by this Section, or is notified by Contractors or potential Contractors of any restriction on the disclosure and use of Information, the matter will be referred in the first instance, to the EMC for resolution.

7.5. The transfer of export-controlled information furnished by one Participant will be authorized by the Government of the furnishing Participant only to those Contractors of the other Participant(s) who will limit the end use of the Information received for the sole purpose of furthering the purposes authorized under this Supplement. The Participants will establish legal arrangements with their Contractors to ensure that their Contractors do not retransfer or otherwise use export controlled information for any purpose other than authorized under this Supplement. Such legal arrangements will also provide that the Contractor will not retransfer the export-controlled information to another Contractor without the Government of the furnishing Participant's consent.

7.6. The export control provisions of paragraph 7.5 above will not apply to exchanges of information amongst and originating from the French, German, Italian, or United Kingdom Participants where such exchanges include export controlled information generated or provided solely by the French, German, Italian, or United Kingdom Participants or their Contractors and do not include any U.S. origin export controlled information.

7.7 The PMO will promptly advise the EMC of any anticipated or actual cost growth, schedule changes, delay, or performance problems of any Contractor for which its contracting agency is responsible.

7.8. Upon mutual consent, consistent with Section III (Objectives) a Participant may contract for the unique national requirements of any other Participant.

SECTION VIII

WORK SHARING

8.1. The Participants will work toward the goal that the work to be performed under the Production and Support Phase will be shared in proportion to the actual cost contribution of the Participants to this Phase, to the maximum extent possible given the overriding requirement of Best Value, consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Production and Support Phase. This work will encompass those requirements contained in Section IV (Scope of Work) of this Supplement that are common to the Participants and are jointly funded under this Phase. However, there will be no requirement for a specific level of work share among the Participants.

8.2. Sources from all Participants will be permitted to bid on Production and Support Phase work. Each Participant will encourage its Contractors to provide competitive opportunities to sources from the other nations to participate in the work of the Phase, provided that such participation does not adversely impact the Phase.

8.3. No requirement will be imposed by any Participant for work sharing or other industrial or commercial compensation in connection with the Production and Support Phase that is not in accordance with this Supplement.

SECTION IX

PROJECT EQUIPMENT

9.1. Each Participant may provide Project Equipment identified as being necessary for executing the Production and Support Phase to another Participant. Project Equipment will remain the property of the providing Participant. A list of all Project Equipment provided by one Participant to another will be developed and maintained by the PC and approved by the EMC.

9.2. The receiving Participant will maintain any such Project Equipment in good order, repair, and operable condition. Unless the providing Participant has authorized the Project Equipment to be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, normal wear and tear excepted, or return the Project Equipment and pay the cost to restore it. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value specified, which will be computed pursuant to the providing Participant's national laws and regulations. If the Project Equipment is lost while in the custody of the receiving Participant, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value specified.

9.3. The providing Participant will deliver Project Equipment to the receiving Participant at a jointly determined location. Possession of the Project Equipment will pass from the providing Participant to the receiving Participant at the time of receipt of the Project Equipment. Any further transportation is the responsibility of the receiving Participant.

9.4. All Project Equipment that is transferred will be used by the receiving Participant only for the purposes of carrying out this Production and Support Phase, unless otherwise consented to in writing by the providing Participant. In addition, in accordance with Section XIV (Third Party Sales and Transfers) Project Equipment will not be re-transferred to a Third Party without the prior written consent of the providing Participant.

9.5. Project Equipment transferred to one Participant under this Supplement will be returned to the providing Participant prior to the withdrawal of this Participant or prior to the termination or expiration of this Supplement.

9.6. Any Project Equipment, which is jointly acquired on behalf of all Participants for use under this Supplement, will be disposed of during this Project or when the Project ceases, as determined by the EMC.

9.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Participant in such Project Equipment to another Participant, or the sale of such equipment to a Third Party in accordance with Section XIV (Third Party Sales and Transfers) of this

Supplement. The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this Supplement.

9.8 Any transfer between Participants of GPS/PPS HAE will be subject to the provisions of Annex C to this Supplement.

SECTION X

DISCLOSURE AND USE OF PROJECT INFORMATION

10.1. General

The Participants recognize that successful collaboration depends on full and prompt exchange of Information necessary for carrying out this Project. The Participants intend to acquire sufficient Information and rights to use such Information to enable the production, maintenance and support of the system. The nature and amount of Information to be acquired will be consistent with the objectives stated in Section III (Objectives), Section IV (Scope of Work), and Section VII (Contracting Provisions). Transfer of such Information to Contractors will be consistent with each Participant's applicable respective export control laws and export control regulations.

10.2. Government Project Foreground Information

10.2.1. Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to all Participants.

10.2.2. Use: Each Participant may use all Government Project Foreground Information without charge for Defense Purposes. The Participant generating Government Project Foreground Information will also retain its rights of use thereto. Any sale or other transfer to a Third Party will be subject to the provisions of Section XIV (Third Party Sales and Transfers) of this Supplement.

10.3. Government Project Background Information

10.3.1. Disclosure: Each Participant, upon request, will disclose to the other Participants any relevant Government Project Background Information generated by its military or civilian employees, provided that:

10.3.1.1. Such Project Background Information is necessary to or useful in the Production and Support Phase, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Phase;

10.3.1.2. Such Project Background Information may be made available without incurring liability to holders of proprietary rights;

10.3.1.3. Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

10.3.1.4. Any disclosure or transfer of such Government Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and export control regulations.

10.3.2. Use: Government Project Background Information disclosed by one Participant to the others may be used without charge by the other Participants for Production and Support Phase purposes only; however, the furnishing Participant will retain all its rights with respect to such Project Background Information.

10.4. Contractor Project Foreground Information

10.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors, will be disclosed without charge to all Participants.

10.4.2. Use: Each Participant may use without charge for its Defense Purposes all Contractor Project Foreground Information generated and delivered by Contractors of the other Participants. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Project Foreground Information will be subject to the provisions of Section XIV (Third Party Sales and Transfers) of this Supplement.

10.5. Contractor Project Background Information

10.5.1. Disclosure: Any Project Background Information, (including information subject to proprietary rights) generated and delivered by Contractors will be made available to the other Participants provided the following provisions are met:

10.5.1.1. Such Project Background Information is necessary to or useful in the Production and Support Phase, with the Participant in possession of the information determining whether it is "necessary to" or "useful in" the Phase;

10.5.1.2. Such Project Background Information may be made available without incurring liability to holders of proprietary rights;

10.5.1.3. Disclosure is consistent with national disclosure policies and regulations of the furnishing Participant; and

10.5.1.4. Any disclosure or transfer of such Contractor Project Background Information to Contractors is consistent with the furnishing Participant's export control laws and export control regulations.

- 10.5.2. Use: Project Background Information furnished by one Participant's Contractors and disclosed to the other Participants may be used without charge by the other Participants for Production and Support Phase purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Participant will retain all its rights with respect to such Project Background Information.

10.6. Alternative Uses of Project Information

- 10.6.1. Any Project Background Information provided by one Participant will be used by the other Participants only for the purposes set forth in this Supplement, unless otherwise consented to in writing by the providing Participant.
- 10.6.2. The prior written consent of each Participant will be required for the use of Project Foreground Information for purposes other than those provided for in this Supplement.

10.7. Proprietary Project Information

- 10.7.1. All Project Information subject to proprietary interests will be identified and marked, and it will be handled as Controlled Unclassified Information.
- 10.7.2. The provisions of the "NATO Agreement on the Communication of Technical Information for Defence Purposes", dated 19 October 1970, and the "Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes", approved by the North Atlantic Council on 1 January 1971, will apply to proprietary Project Information related to this Supplement.

10.8. Patents

- 10.8.1. Each Participant will include in all its Contracts a provision governing the disposition of rights in regard to Project Inventions and patent rights related thereto, which either;
- 10.8.1.1. Provides that the Participant will hold title to all Project Inventions together with the right to make patent application for the same, free of encumbrance from the Contractor; or
- 10.8.1.2. Provides that the Contractor will hold title (or may elect to retain title) for Project Inventions together with the right to make patent applications for the same, while securing for the Participant a license for the Project Inventions, and any patents therefore, on terms in compliance with the provisions of paragraph 10.8.2. below.

- 10.8.2. In the event that a Contractor holds the title (or elects to retain title) for a Project Invention, the Contracting Participant will secure for all Participants non-exclusive, irrevocable, royalty-free licenses under all patents secured for the invention, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.
- 10.8.3. Where a Participant has or can secure the right to file a patent application with regard to a Project Invention, that Participant will consult with the other Participants regarding the filing of such patent application. If a Participant, having filed, or caused to be filed, a patent application in the country of another Participant, decides to stop prosecution of the application, that Participant will notify the other Participants of that decision and permit the other Participants to continue the prosecution.
- 10.8.4. Each Participant will be furnished with copies of the patent applications filed and patents granted with regard to Project Inventions.
- 10.8.5. Each Participant will grant to the other Participants a non-exclusive, irrevocable, royalty-free license under its patents for Project Inventions, to practice or have practiced the patented Project Invention for Defense Purposes throughout the world.
- 10.8.6. Patent applications which contain Classified Information, to be filed under this MOU Supplement, will be protected and safeguarded in accordance with the requirements contained in the "NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense" and for which Applications for Patents have been made, signed on 21 September 1960, and its Implementing Procedures.